



Republic of the Philippines
 Supreme Court
 Manila

EN BANC

MOVERTRADE CORPORATION,
Petitioner,

G.R. No. 214690

Present:

GESMUNDO, C.J.,
 PERLAS-BERNABE,
 LEONEN,
 CAGUIOA,
 HERNANDO,
 CARANDANG,
 LAZARO-JAVIER,
 INTING,
 ZALAMEDA,
 LOPEZ, M.,
 GAERLAN,
 ROSARIO,
 LOPEZ, J., and
 DIMAAMPAO, JJ.

- versus -

THE COMMISSION ON AUDIT
 and THE DEPARTMENT OF
 PUBLIC WORKS AND
 HIGHWAYS,

Promulgated:

Respondents.

November 9, 2021

X-----
Intombar-trays -X

DECISION

INTING, J.:

Before the Court is a Petition¹ for *Certiorari* under Rule 64, in relation to Rule 65, of the Rules of Court² assailing the Decision No. 2014-234³ dated September 11, 2014 of the Commission on Audit

¹ *Rollo*, Vol. I, pp. 3-13.

² The present action was filed as a petition under Rule 65. In any case, We treat this as a petition filed under Rule 64, having been filed within the 30-day reglementary period provided under Section 3, Rule 64 of the Rules of Court.

³ *Rollo*, Vol. I, pp. 53-59; signed by Commission on Audit (COA) Commissioners Ma. Gracia M. Pulido Tan, Heidi L. Mendoza, and Jose A. Fabia.

Pr

(COA) Commission Proper (COA Proper). In the assailed Decision No. 2014-234, the COA Proper denied Movertrade Corporation's (Movertrade) money claim against the Department of Public Works and Highways (DPWH) for the payment of ₱43,725,016.23 representing additional dredging works undertaken relative to the Mount Pinatubo Rehabilitation Program.

The Antecedents

Under the Agreement⁴ dated February 7, 1996, DPWH contracted Movertrade to undertake, execute, and complete⁵ works in the Pampanga Bay and the primary Pasac-Guagua-San Fernando waterways affected by the Mt. Pinatubo eruptions and mudflows (the Project) for a total contract amount of ₱188,698,000.00, viz.:

Works	Volume	Contract Amount
Dredging works	3.35 million cubic meters	₱148,698,000.00
Distance pumping	provisional sum	20,000,000.00
Spoil site development	provisional sum	20,000,000.00
		₱188,698,000.00 ⁶

Paragraph 19 of the Agreement provides:

19. The contract price shall be adjusted on a "No Loss, No Gain" basis if during the effectivity of the contract, the cost of labor, equipment, materials and supplies required for the construction should increase due to the direct costs of the Government.⁷

The COA summarized the events leading to the controversy:

During the implementation of the project, Movertrade allegedly undertook additional dredging work as an extreme measure to counter the fast siltation of the river system such that any delay in the dredging work will make the design and specifications required under the contract difficult to follow. The additional dredging work yielded a total volume of 984,354.26 cubic meters, or the total equivalent amount of ₱43,725,016.23.

⁴ *Id.* at 19-27.

⁵ *Id.* at 19.

⁶ *Id.* at 22.

⁷ *Id.* at 25.

Through its letters dated July 28, 1998 and August 4, 1998 addressed to Secretary Vigilante, Movertrade requested that its detailed justification for the additional expenditures be submitted for a study and evaluation by the Price Escalation Committee and the Arbitration Committee, DPWH. The additional expenditures were incurred as a result of delays and disruptions during the implementation of the project. Movertrade then formally requested reimbursement of the additional costs based on the "No Loss, No Gain" provision under Paragraph [1]9 of the Contract Agreement. However, for failure of the DPWH to pay its outstanding obligation to Movertrade, the latter, through counsel, formally demanded payment from the former on January 10, 2005, the due amount of P42.144 million representing 948,767.70 cubic meters of dredged volume.

On February 8, 2007, the Officer-in-Charge (OIC), Legal Service (LS), DPWH, in his undated memorandum for the DPWH Secretary, stated that although the additional dredging works were not covered by a valid contract, recovery may be allowed on the basis of quantum meruit, which allows payment for services performed without a contract, computed according to what or how much is deserved. He also recommended that the claim be referred to the DPWH's Bureau of Construction, because the determination of the amount to be paid for the additional dredging works involves a question of fact. However, the approval of the recommendation portion of the Memorandum was left unsigned by the DPWH Secretary.

On November 8, 2010, upon instruction of the Head of the Extraordinary Claims Review Committee, DPWH Bureau of Construction, the OIC-Project Director, Major Flood Control & Drainage Projects-Cluster II (MFCDP II), informed Movertrade that its claim for financial compensation, being considered a money claim against the government, should be filed before the Commission on Audit (COA), which has original jurisdiction under Rule VIII of the 2009 Revised Rules of Procedure of the COA x x x.⁸ (Italics in the original.)

This prompted Movertrade to file a petition before the COA Proper to collect from DPWH the payment for the alleged additional dredging works amounting to P43,725,016.23 (money claim).⁹

Movertrade anchored its claim on the following: *first*, the "No Loss, No Gain" provision under Paragraph 19 of the Agreement;¹⁰

⁸ *Id.* at 54.

⁹ See Petition dated December 20, 2010, *id.* at 15-18.

¹⁰ *Id.* at 16.

second, the OIC-LS-DPWH's memorandum addressed to the DPWH Secretary stating that while "the additional dredging works [were] not covered by a valid contract x x x recovery may be allowed on the basis of *quantum meruit* x x x;"¹¹ and *third*, the Mt. Pinatubo Emergency-Project Management Office Project Director's memorandum addressed to the Extraordinary Claims Review Committee, recommending payment of the claim.¹²

Movertrade further averred that: (a) DPWH's nonpayment contravenes DPWH Department Order (DO) No. 58, Series of 2008,¹³ on the "Procedural Flow and Guidelines on the Processing of Extraordinary Claims;"¹⁴ and (b) "[e]nforcement of [DPWH's] contractual obligations is not vested on [the COA], but [on DPWH directly]."¹⁵

In its Answer,¹⁶ DPWH countered that Movertrade's claim was unmeritorious, *viz.*: *first*, Movertrade failed to establish the factual basis therefor;¹⁷ *second*, Section 15 of the parties' Conditions of Contract provides that "DPWH contracts do not provide for any cost for delay. The contract price [is] deemed inclusive of works associated with delays x x x;"¹⁸ and *third*, under Item III of the Bid Book Form, Movertrade agreed that any works performed in excess of that specified or shown in the drawings, *unless ordered by [DPWH] will not be paid for.*¹⁹

Ruling of the COA Proper

In its assailed Decision No. 2014-234, the COA Proper denied Movertrade's claim.

It ratiocinated as follows: *first*, the principle of *quantum meruit* does not apply in resolving Movertrade's money claim because the Project was covered by a written agreement between the parties.²⁰ *Second*, Movertrade did not obtain the project engineer/head of office's

¹¹ *Id.* at 17.

¹² *Id.*

¹³ Available on <https://www.dpwh.gov.ph/dpwh/sites/default/files/issuances/DO_058_S2008.pdf> (last accessed on August 24, 2021).

¹⁴ *Rollo*, Vol. I, p. 18.

¹⁵ *Id.*

¹⁶ *Id.* at 40-47.

¹⁷ *Id.* at 46.

¹⁸ *Id.* at 24 and 45-46.

¹⁹ *Id.* at 46.

²⁰ *Id.* at 56-57.

approval prior to the commencement of additional dredging works. This constitutes a breach of contract, in particular, Item III of the Bid Book Form and Clause 6 of the Agreement.²¹ *Third*, Section 85 of Presidential Decree No. 1445, otherwise known as the Government Auditing Code of the Philippines (Audit Code), prohibits the execution of contracts without an appropriation sufficient to cover the proposed expenditure. However, Movertrade carried on with the additional works without any appropriation.²² *Fourth*, DPWH DO No. 58 merely sets forth procedural guidelines for the processing of extraordinary claims. *Fifth*, Movertrade relied on the “No Loss, No Gain” but failed to show: (a) an approved price escalation/price adjustment or an approved variation/change/extra work orders for the Project; and (b) DPWH’s acceptance and acknowledgment of the additional works undertaken.²³

Finally, it reiterated that Movertrade’s money claim falls squarely within the COA’s jurisdiction as provided under Section 26 of the Audit Code.

Instead of moving for reconsideration before the COA Proper, Movertrade filed the present petition.

Petitioner’s Arguments

In assailing the COA Proper’s Decision No. 2014-234, Movertrade avers as follows:

V. ASSIGNMENT OF ERRORS

The Honorable Commission on Audit acted without or in excess of jurisdiction or with grave abuse of discretion in finding that Movertrade is not entitled for the payment of P43,984,354.26 representing the 984,354.26 cubic meters additional dredging work done at Pasac-Gua-gua-San Fernando, Pampanga Waterways.

The Honorable Commission on Audit acted without or in excess of jurisdiction or with grave abuse of discretion in finding that Movertrade is not entitled for payment of x x x attorney’s fees and legal interest of the amount being claimed.²⁴

Movertrade admits that while there had been no written contract

²¹ *Id.*

²² *Id.* at 57.

²³ *Id.*

²⁴ *Id.* at 7.

covering the additional dredging works, the DPWH engineers supervised and expected such works, as reflected in the Sounding Data and the As Built Plan. DPWH and the people of Pampanga benefitted from the Project. Thus, it is entitled to the payment of its claim on the basis of *quantum meruit*.²⁵

Respondent's Arguments

On the other hand, the COA, represented by the Office of the Solicitor General (OSG), points out that the present petition suffers a fatal defect: (1) that it was filed without a prior motion for reconsideration before the COA Proper;²⁶ (2) that a motion for reconsideration is a prerequisite for the availment of *certiorari* as a remedy;²⁷ and (3) that the principle of *quantum meruit* does not apply to Movertrade's claim because it undertook the alleged additional works without DPWH's approval, as required by the Agreement.²⁸

Issues

The Court shall resolve two issues: (1) Did Movertrade's immediate resort to *certiorari* proceedings without filing a reconsideration before the COA Proper render the present petition defective? (2) Did the COA Proper commit any act of grave abuse of discretion warranting a reversal of its assailed ruling?

The Court's Ruling

The present action must be dismissed. It lacks the essential requisites for a petition for *certiorari*.

First, as observed by the OSG,²⁹ Movertrade failed to move for a reconsideration before the COA Proper prior to filing the present petition. This renders the present petition procedurally defective.

²⁵ *Id.* at 9.

²⁶ As culled from the Comment dated February 17, 2015 of the COA and Department of Public Works and Highways, *follo*, Vol. IV, p. 1821-1822.

²⁷ *Id.* at 1821.

²⁸ *Id.* at 1823.

²⁹ *Id.* at 1821.

The general rule requires the aggrieved party to, first, seek reconsideration from the tribunal that rendered the questioned judgment prior to resorting to *certiorari* proceedings. Consequently, the higher court may decline taking cognizance of the *certiorari* petition when it is clear that the lower tribunal had been deprived of the opportunity to correct its errors, if any, and “vindicate itself of an act unfairly imputed.”³⁰

That a party was quick to resort to *certiorari* proceedings without observing this requirement shows that he had another plain, speedy, and adequate remedy to the assailed judgment or order³¹ but did not exhaust such opportunity. This is especially crucial in the case of a money claim against the government, inasmuch as these actions are litigated for the first time before the COA Proper.³²

While the rule admits of exceptions,³³ Movertrade does not plead any circumstance that may justify the procedural misstep. Significantly, the OSG raised the issue in its Comment³⁴ to the petition. However, Movertrade failed to address the matter in its Reply,³⁵ or refute the accusation.

Second, Movertrade’s arguments are not *bona fide* imputations of grave abuse of discretion on the part of the COA Proper. In the main, Movertrade faults the COA Proper for not appreciating the principle of *quantum meruit* in favor of its money claim. However, at best, this issue

³⁰ *Estate of Salvador Serra v. Heirs of Hernaez*, 503 Phil. 736-743 (2005).

³¹ Section 1, Rule 65 of the Rules of Court provides:

SECTION 1. *Petition for Certiorari*. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the paragraph of Section 1, Rule 46. (1a)

³² A money claim against the government is among those original cases that must be filed directly with the COA Proper (Section 1, Rule VIII, The 2009 Revised Rules of Procedure of the Commission on Audit, September 15, 2009).

³³ See *Domdom v. Third & Fifth Divisions of the Sandiganbayan, et al.*, 627 Phil. 341, 346 (2010); *Estalilla v. Commission on Audit*, G.R. No. 217448, September 10, 2019.

³⁴ *Rollo*, Vol. IV, p. 1817-1828.

³⁵ *Id.* at 1836-1841.

is a mere error of judgment which cannot be corrected *via certiorari*. The Court stresses that the “petitioner bears the burden of proving ‘not merely reversible error’ committed by the COA Proper, but ‘such a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction.’”³⁶

At any rate, even if the Court were to ignore the above discussed flaws, the petition would still be unmeritorious.

Notably, this is not the first occasion Movertrade had sought compensation for works undertaken in addition to or beyond those expressly provided in the subject Agreement.

Earlier in 1997, Movertrade also charged DPWH for the costs of side dumping. It alleged that there were no existing/available spoil sites into which it could pump the dredge spoils. Instead of using the spoil sites identified by the DPWH for the Project, it side dumped the materials within the river, the costs for which it charged as dredging works. The COA Proper denied this money claim.

On September 22, 2015,³⁷ the Court affirmed the denial of Movertrade’s money claim. In rejecting the theory of entitlement to payment based on *quantum meruit*, the Court pronounced:

It is a basic principle in law that contracts have the force of law between the parties and should be complied with in good faith. In this case, the contract specifically provides the manner of disposing dredge spoils. *Thus, petitioner cannot unilaterally change the manner of disposal without first amending the contract or obtaining the express consent or approval of respondent DPWH. Otherwise, petitioner would be guilty of breaching the contract. “[A] breach occurs where the contractor inexcusably fails to perform substantially in accordance with the terms of the contract.”* Without a doubt, petitioner’s failure to dump the dredge spoils at the designated spoil sites constitutes a breach.

x x x The act of dumping dredge spoils back into the river clearly violates paragraph 11 of the Contract Agreement x x x.

³⁶ *Zamboanga City Water District v. Commission on Audit*, G.R. No. 218374, December 1, 2020, citing *Fernandez v. Commission on Audit*, G.R. No. 205389, November 19, 2019. See also Section 2, Rule 64, in relation to Rule 65, of the Rules of Court.

³⁷ See *Movertrade Corp. v. Commission on Audit, et al.*, 770 Phil. 79 (2015).

x x x x

Considering that the dredge spoils were dumped back into the river, we cannot be certain, as pointed out by the OSG, that the government benefited from petitioner's 165,576.27 cubic meters dredging work. And it would be unfair to allow petitioner to benefit from its breach. x x x *Thus, we agree with respondent COA that petitioner is not entitled to its money claim for the 165,576.27 cubic meters dredging work as it was done in contravention of paragraph 11 of the Contract Agreement.*³⁸ (Italics supplied; citations omitted.)

The ruling applies squarely to the present controversy. Likewise, the additional dredging works subject of the present case were undertaken without DPWH's prior approval and in breach of the Agreement.

First, Paragraph 6 of the Agreement expressly provides:

The CONTRACTOR shall strictly follow and adhere to the plans and specifications provided by [DPWH] including the direction of [DPWH]'s Project Engineer or his Assistants assigned to supervise the works.

Second, Movertrade already acknowledged³⁹ that it is not authorized to undertake works beyond those specified in the Agreement without DPWH's prior approval and that, in the event it nonetheless proceeds, it will not be compensated therefor:

We understand the work is to be carried under a combination unit and Lump Sum price contract, where payments will be made only for the actual quantities or work we performed for unit price or at Lump Sum price we quote for Lump Sum price items at prices quoted in the Bid Schedule. Any work which we performed in excess of what is specified or shown in the drawings, unless ordered by [DPWH,] will not be paid for."

Third, Movertrade failed to establish (a) that it obtained the requisite approval and (b) much less, that DPWH authorized it to undertake dredging works in addition to those already provided in the Agreement.

³⁸ *Id.* at 91-93.

³⁹ Item III of the Bid Book Form. *Rollo*, Vol. I, p. 46.

The Court has since reiterated that a contractor cannot recover compensation based on the principle of *quantum meruit* where he had been bound by a written agreement and then found guilty of breach thereof.⁴⁰

In these lights, the Court finds no grave abuse of discretion in the COA Proper's denial of the subject money claim.

WHEREFORE, the instant petition is **DISMISSED**.

SO ORDERED.



HENRI JEAN PAUL B. INTING
Associate Justice

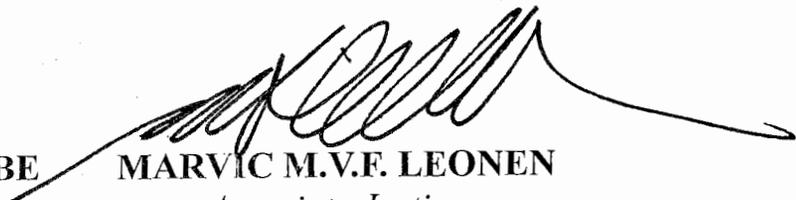
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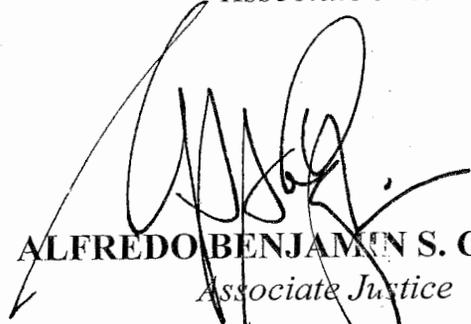
ALEXANDER G. GESMUNDO
Chief Justice



ESTELA M. PERLAS-BERNABE
Associate Justice



MARVIC M.V.F. LEONEN
Associate Justice

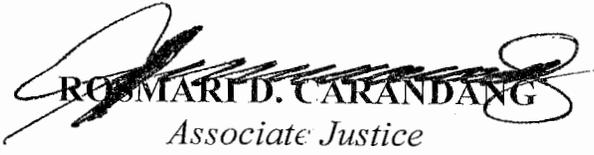


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

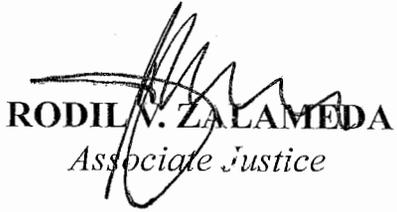


RAMON PAUL L. HERNANDO
Associate Justice

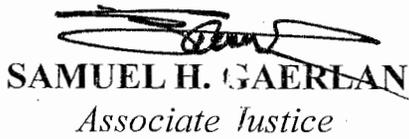
⁴⁰ *Metropolitan Manila Development Authority v. D.M. Consunji, Inc.*, G.R. No. 222423, February 20, 2019.

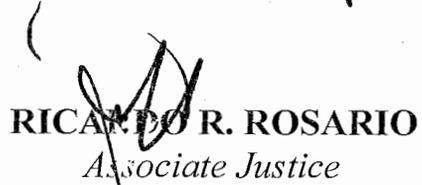

ROSMARIE D. CARANDANG
Associate Justice


AMY C. LAZARO-JAVIER
Associate Justice

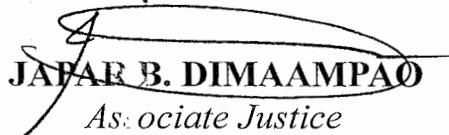

RODIL N. ZALAMEDA
Associate Justice


MARIO N. LOPEZ
Associate Justice


SAMUEL H. GAERLAN
Associate Justice

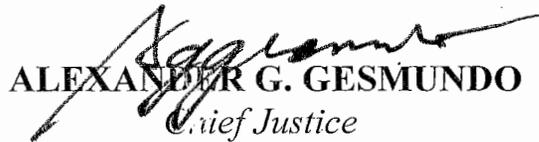

RICARDO R. ROSARIO
Associate Justice


JHOSEP Y. LOPEZ
Associate Justice

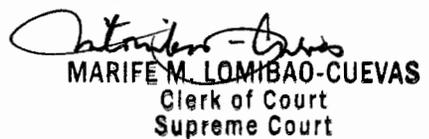

JAFAR B. DIMAAMPAO
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.


ALEXANDER G. GESMUNDO
Chief Justice

CERTIFIED TRUE COPY


MARIFE M. LOMIBAO-CUEVAS
 Clerk of Court
 Supreme Court